

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JONATHAN JUDKINS, #B00481,

Plaintiff,

vs.

**W. SPILLER, C/O WALKER,
SGT. HART, LT. BROOKMAN,
LT. SCHOENBEDK, KELLY PIERCE,
J. LASHBROOK, and
F. LAWRENCE,**

Defendants.

Case No. 21-288-SPM

MEMORANDUM AND ORDER

McGLYNN, District Judge:

This matter is before the Court for case management. Plaintiff filed this action on March 15, 2021. (Doc. 1). His original Complaint was dismissed without prejudice for failure to state a claim upon which relief may be granted, and Plaintiff was given leave to submit a First Amended Complaint, which he did. (Docs. 17, 20). On November 7, 2022, this Court entered an Order dismissing the First Amended Complaint pursuant to 28 U.S.C. § 1915A for failure to state a claim upon which relief may be granted on his allegations of due process violations, unconstitutional cell conditions, and retaliation. (Doc. 21). Plaintiff was given until December 7, 2022, to file a Second Amended Complaint on his retaliation claim if he wished to further pursue it, and the Clerk mailed him a blank complaint form for his use in preparing his amended pleading.

Plaintiff was warned that if he failed to submit a Second Amended Complaint, this case would be dismissed with prejudice, and the dismissal would count as a “strike” under 28 U.S.C. § 1915(g). (Doc. 21, pp. 14-15). He was also given the option to voluntarily dismiss this case by the same deadline, in which case the Court would not count the dismissal as a “strike.” (Doc. 21,

pp. 15-16).

Plaintiff's December 7, 2022, deadline has come and gone, and Plaintiff has failed to respond in any way. This action is therefore subject to dismissal for failure to prosecute.

IT IS HEREBY ORDERED that this action is **DISMISSED with prejudice** for failure to prosecute. FED. R. CIV. P. 41(b); *see generally James v. McDonald's Corp.*, 417 F.3d 672, 681 (7th Cir. 2005); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Lucien v. Breweur*, 9 F.3d 26, 29 (7th Cir. 1993) (dismissal for failure to prosecute is presumptively with prejudice).

Because Plaintiff's First Amended Complaint was dismissed for failure to state a claim upon which relief may be granted (Doc. 21), the Court counts this dismissal as one of Plaintiff's three allotted "strikes" under the provisions of 28 U.S.C. § 1915(g).

If Plaintiff wishes to appeal this dismissal, his notice of appeal must be filed with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* must set forth the issues Plaintiff plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur another "strike." A proper and timely motion filed pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended.

The Clerk is **DIRECTED** to **CLOSE THIS CASE** and enter judgment accordingly.

IT IS SO ORDERED.

DATED: December 30, 2022

s/ Stephen P. McGlynn
STEPHEN P. McGLYNN
United States District Judge